

Michael Kind, Esq.
Nevada Bar No.: 13903
KIND LAW
8860 South Maryland Parkway, Suite 106
Las Vegas, Nevada 89123
(702) 337-2322
(702) 329-5881 (fax)
mk@kindlaw.com

George Haines, Esq.
Nevada Bar No. 9411
Gerardo Avalos, Esq.
Nevada Bar No. 15171
FREEDOM LAW FIRM
8985 S. Eastern Ave., Suite 350
Las Vegas, Nevada 89123
(702) 880-5554
(702) 385-5518 (fax)
Ghaines@freedomlegalteam.com
Counsel for Plaintiff Rand L. Hagerman

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Rand L. Hagerman,

Plaintiff,

v.

Equifax Information Services LLC
and Bank of America N.A.,

Defendant.

Case No.:

**Complaint for damages under the
FCRA, 15 U.S.C. § 1681**

Introduction

1. The United States Congress has found the banking system is dependent up-on fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. Congress enacted the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (“FCRA”), to ensure fair and accurate re-orting, promote efficiency in the banking system, and protect consumer privacy. The FCRA seeks to ensure consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy because consumer reporting agencies have assumed such a vital role in assembling and evaluating consumer credit and other information on consumers. The FCRA also imposes duties on the sources that provide credit information to credit reporting agencies, called “furnishers.”
2. The FCRA protects consumers through a tightly wound set of procedural protections from the material risk of harms that otherwise flow from inaccurate reporting. Thus, through the FCRA, Congress struck a balance between the credit industry’s desire to base credit decisions on accurate information, and consumers’ substantive right to protection from damage to reputation, shame, mortification, and the emotional distress that naturally follows from inaccurate reporting of a consumer’s fidelity to his or her financial obligations.
3. Rand L. Hagerman (“Plaintiff”), by counsel, brings this action to challenge the actions of Equifax Information Services LLC and Bank of America N.A (jointly as “Defendants”), with regard to erroneous reports of derogatory credit information to national reporting agencies and Defendants’ failure to properly investigate Plaintiff’s disputes.

- 1 4. Plaintiff makes these allegations on information and belief, with the exception of
2 those allegations that pertain to Plaintiff, which Plaintiff alleges on personal
3 knowledge.
- 4 5. While many violations are described below with specificity, this Complaint
5 alleges violations of the statutes cited in their entirety.
- 6 6. Unless otherwise stated, all the conduct engaged in by Defendant took place in
7 Nevada.
- 8 7. Any violations by Defendants was knowing, willful, and intentional, and
9 Defendants did not maintain procedures reasonably adapted to avoid any such
10 violations.
- 11 8. Defendants failed to properly investigate Plaintiff's disputes, damaging Plaintiff's
12 creditworthiness.

13 **Jurisdiction and Venue**

- 14 9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 (federal question
15 jurisdiction); 15 U.S.C. § 1681.
- 16 10. This action arises out of Defendant's violations of the FCRA.
- 17 11. Venue is proper in the United States District Court for the District of Nevada
18 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark County,
19 Nevada and because Defendants are subject to personal jurisdiction in Clark
20 County, Nevada as they conduct business here. Venue is also proper because the
21 conduct giving rise to this action occurred in Nevada. 28 U.S.C. § 1391(b)(2).

22 **Parties**

- 23 12. Plaintiff is a natural person living in Clark County, Nevada. In addition,
24 Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1681a(c).
- 25 13. Equifax Information Services LLC and Bank of America N.A are each a
26 corporation doing business in the State of Nevada.
27

1 14. Bank of America N.A is a furnisher of information as contemplated by 15
2 U.S.C. § 1681s-2(b) that regularly and in the ordinary course of business
3 furnishes information to a consumer credit reporting agency.

4 15. Equifax regularly assembles and/or evaluates consumer credit information for
5 the purpose of furnishing consumer reports to third parties and uses interstate
6 commerce to prepare and/or furnish the reports. This entity is a “consumer
7 reporting agency” as that term is defined by 15 U.S.C. §1681a(f).

8 16. Unless otherwise indicated, the use of Defendants’ names in this Complaint
9 includes all agents, employees, officers, members, directors, heirs, successors,
10 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
11 the named Defendant.

12 — **GENERAL ALLEGATIONS** —

13 17. On or about Oct 31, 2019, Plaintiff filed for bankruptcy in the United States
14 bankruptcy Court for the District of Nevada pursuant to 11 U.S.C. §1301 et seq.
15 (the “bankruptcy”).

16 18. The obligations (the “debt”) to each furnisher herein (as applicable) were
17 scheduled in the bankruptcy and each respective creditor, or its predecessor in
18 interest, received notice of the bankruptcy.

19 19. None of the creditors named herein filed any proceedings to declare their
20 alleged debts “non-dischargeable” pursuant to 11 U.S.C. § 523 et seq.

21 20. None of the creditors named herein obtained relief from the “automatic stay”
22 codified at 11 U.S.C. §362 et seq. while Plaintiff’s bankruptcy was pending to
23 pursue Plaintiff for any personal liability.

24 21. Plaintiff’s debts were discharged and the accounts named herein (as applicable)
25 were discharged through the bankruptcy on Feb 10, 2020.

26 22. Further, while the automatic stay was in effect during the bankruptcy, it was
27 illegal and inaccurate for any of the creditor-defendants to report any

1 post-bankruptcy derogatory collection information, which was inconsistent with
2 the Orders entered by the bankruptcy Court.

3 23. However, Defendants either reported or caused to be reported inaccurate
4 information as discussed herein after Plaintiff's debts were discharged.

5 24. Additionally, Defendants' inaccurate reporting did not comply with the
6 Consumer Data Industry Association's Metro 2 reporting standards, which
7 provides guidance for credit reporting and FCRA compliance.

8 25. The Consumer Data Industry Association ("CDIA") publishes the Metro 2
9 ("Metro 2") reporting standards to assist furnishers with their compliance
10 requirements under the FCRA.

11 26. Courts rely on such guidance to determine furnisher liability. See, e.g., *In re*
12 *Helmes*, 336 B.R. 105, 107 (Bankr. E.D. Va. 2005) (finding that "industry
13 standards require that a debt discharged in bankruptcy be reported to a credit
14 reporting agency with the notation 'Discharged in bankruptcy' and with a zero
15 balance due").

16 27. On information and belief, Defendants herein adopted and at all times relevant
17 implemented the Metro 2 format.

18 28. On information and belief, each furnisher-Defendant named herein adopted the
19 Metro 2 reporting standards and at all times relevant implemented the Metro 2
20 format as an integral aspect of their respective duties under the FCRA to have
21 in place adequate and reasonable policies and procedures to handle
22 investigations of disputed information.

23 29. Each furnisher-Defendant named herein failed to conform to the Metro 2
24 Format when reporting on Plaintiff's accounts after Plaintiff filed bankruptcy as
25 further set forth below.

26 30. In turn, each of the credit reporting agencies named herein, re-reported the
27 inaccurate information, thus violating their duty to follow reasonable

procedures to assure maximum possible accuracy under 15 U.S.C. § 1681e(b) when preparing a consumer report.

31. To this end, the adverse reporting on Plaintiff's consumer report departed from the credit industry's own reporting standards and was not only inaccurate, but also materially misleading under the CDIA's standards as well.

32. A "materially misleading" statement is concerned with omissions to credit entries, that in context create misperceptions about otherwise may be factually accurate data. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009).

**Equifax and Bank of America N.A Misreported Credit Information
and Failed to Investigate Plaintiff's Dispute**

Re: Bank of America N.A Account No. 0297***

33. In Plaintiff's credit report from Equifax dated Mar 9, 2020, Equifax and Bank of America N.A inaccurately reported that Plaintiff owed an amount of \$55,191.00. to Bank of America N.A even though the debt was discharged in Plaintiff's bankruptcy. This was inaccurate since Plaintiff filed for bankruptcy on Oct 31, 2019 and Plaintiff received a discharge on Feb 10, 2020.

34. On May 20, 2020, Plaintiff disputed Equifax reporting regarding the debt pursuant to 15 U.S.C. § 1681i by notifying Equifax, in writing, of the incorrect and inaccurate credit information.

35. Specifically, Plaintiff sent a letter, certified, return receipt, to Equifax, requesting the above inaccurate and incorrect derogatory information be updated, modified or corrected.

36. Equifax was required to conduct a reinvestigation into this specific debt on Plaintiff's consumer report pursuant to 15 U.S.C. §1681i

37. Upon information and belief, Equifax timely notified Bank of America N.A regarding Plaintiff's dispute, as required under 15 U.S.C. § 1681i(a)(2).

- 1 38. Upon information and belief, Equifax provided Bank of America N.A with a
2 notice regarding Plaintiff's dispute under 15 U.S.C. § 1681i(a)(5)(A).
- 3 39. Upon information and belief, Equifax provided all relevant information to Bank
4 of America N.A regarding Plaintiff's dispute, as required under 15 U.S.C. §
5 1681i(a)(2).
- 6 40. On or around Jun 8, 2020, Plaintiff received notice that Equifax and Bank of
7 America N.A investigated and reinvestigated Plaintiff's dispute, as required
8 under 15 U.S.C. § 1681i(a)(6).
- 9 41. A reasonable investigation by Equifax and Bank of America N.A would have
10 indicated that they were reporting the above disputed accounts inaccurately.
- 11 42. Equifax and Bank of America N.A failed to review all relevant information
12 provided by Plaintiff in the dispute to Equifax, as required by and in violation
13 of 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b), respectively.
- 14 43. Upon information and belief, Equifax and Bank of America N.A re-reported the
15 inaccurate derogatory information on Plaintiff's report. Specifically, upon
16 information and belief, Equifax and Bank of America N.A re-reported that
17 Plaintiff owed an amount of \$55,191.00. to Bank of America N.A even though
18 the debt was discharged in Plaintiff's bankruptcy, which was inaccurate, as
19 discussed above.
- 20 44. Equifax and Bank of America N.A, upon receipt of Plaintiff's dispute, failed to
21 conduct an investigation or reinvestigation with respect to the disputed
22 information as required by 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b),
23 respectively.
- 24 45. Equifax and Bank of America N.A failed to review all relevant information
25 provided by Plaintiff in the dispute to Equifax, as required by and in violation
26 of 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b), respectively.
- 27 46. Due to Equifax's and Bank of America N.A's failure to reasonably investigate,

they further failed to correct and update Plaintiff's information as required by 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b), thereby causing continued reporting of inaccurate information in violation of 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b), respectively.

47. Equifax's and Bank of America N.A continued inaccurate and negative reporting of the debt in light of their knowledge of the actual error was willful. Plaintiff is, accordingly, eligible for statutory damages.

48. Also as a result of Equifax's and Bank of America N.A's continued inaccurate and negative reporting, Plaintiff has suffered actual damages, including without limitation, fear of credit denials, out-of-pocket expenses in challenging Defendants' inaccurate reporting, damage to Plaintiff's creditworthiness and emotional distress.

49. By inaccurately reporting account information after notice and confirmation of its errors, Equifax and Bank of America N.A failed to take the appropriate measures as required under 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b), respectively.

Plaintiff's damages

50. In addition to Plaintiff's creditworthiness being negatively impacted, Plaintiff suffered emotional distress and mental anguish as a result of Defendants' actions described herein. In addition, Plaintiff incurred out-of-pocket costs and time in attempts to dispute Defendants' actions. Plaintiff further suffered humiliation and embarrassment.

///

///

///

VIOLATION OF THE FAIR CREDIT REPORTING ACT

15 U.S.C. § 1681

51. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

52. The foregoing acts and omissions constitute numerous and multiple willful, reckless or negligent violations of the FCRA, including but not limited to each and every one of the above-cited provisions of the FCRA, 15 U.S.C § 1681, et seq.

53. As a result of each and every willful violation of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from Defendants.

54. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2) from Defendants.

Prayer for relief

55. Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from Defendants, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- An award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- An award of punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1); and
- Any other relief that this Court deems just and proper.

Jury Demand

56. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: November 13, 2020.

Respectfully submitted,

KIND LAW

/s/ Michael Kind
Michael Kind, Esq.
8860 South Maryland Parkway, Suite 106
Las Vegas, Nevada 89123

FREEDOM LAW FIRM

/s/ George Haines
George Haines, Esq.
8985 S. Eastern Ave., Suite 350
Las Vegas, Nevada 89123
Counsel for Plaintiff Rand L. Hagerman